Speaker's Office <speaker@guamlegislature.org>

Letter from AG Camacho re proposed Prutehi I Hanom Act of 2019

Rebecca M. Perez <rmperez@guamag.org> Wed, Jul 3, 2019 at 1:36 PM
To: "speaker@guamlegislature.org" <speaker@guamlegislature.org>
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Hafa Adai Speaker Muna Barnes –

Attached for your information is testimony from Attorney General Camacho regarding the Prutehi I Hanom Act of 2019.

[Quoted text hidden]

Testimony re Prutehi i Hanom Act of 2019 07.03.2019.pdf
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Speaker Tina Rose Muña Barnes

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Hon. Leevin Taitano Camacho
Attorney General of Guam

July 3, 2019

Hon. Tina Muña Barnes
Speaker
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Re: Testimony regarding *Prutehi i Hanom Act* of 2019

Håfa Adai Madame Speaker and Senators of the 35th Guam Legislature,

As stated in my letter of June 28, 2019 to the Governor, I support the passage of the *Prutehi i Hanom Act* of 2019.

My office will be pursuing legal claims for damage to Guam's water from the use of per- and polyfluoroalkyl substances (PFAS). We will take the lead in this litigation, but recognize that a suit of this type will require the use of consultants and additional counsel to put forward the strongest case for Guam. This bill would give our office the resources to best navigate a case that will involve hyper-technical scientific analysis and the assistance of attorneys who specialize in environmental and multi-party litigation.

The exact cost of the litigation is unknown. If the Government of Guam were to pay up front for consultants and legal services, it is expected that costs would quickly reach hundreds of thousands of dollars just for the initial phases of research, filing, and discovery.

We will be transparent about any agreements with experts. If the Legislature passes this bill, we would engage in a quick and well documented process of comparing the fees, experience, and availability of firms willing to assist Guam. The AG's office is the chief legal representative for the Government of

Guam, and it is also a steward of public funds. To be clear, law firms have expressed interest in representing Guam, but our office has not received or solicited any formal proposals, discussed any specifics regarding representation, or committed to selecting any law firm. To get the best possible representation and the best fee structure, even with the authority afforded by this bill, it will take several weeks to compare and engage expert services, research the claims available, identify all responsible parties and finalize a complaint.

If the Legislature does not pass this bill, my office could put together a preliminary complaint. Although we one day hope to have the internal resources to file cases like this, we do not currently have the expertise or funds that would be available to a law firm or consultant that specializes in these types of cases. Without immediate action, we could then ask the Legislature for an appropriation so that we could use the existing procurement process to acquire legal or other expert services. This method is less than ideal and could jeopardize our ability to represent the Government in the best possible way.

As the Legislature is aware, we have requested urgent action because current multi-district litigation related to PFAS contamination is proceeding quickly. The existing procurement process may mean we miss an opportunity to be heard in a forum that is already familiar with these types of cases. It could also limit our ability to seek relief against all parties responsible for the harm caused to Guam's water. Filing a claim against private parties would not preclude subsequent action against any government entity where damages warrant legal action.

Using a firm that has previously participated in environmental contamination suits means that Guam would not have to start at step 1; its prior experience can provide knowledge of potential defendants, required measures to prove contamination, possible methods of payment or remediation, and other useful information. The use of a contingency fee arrangement presents an opportunity for Guam to engage in large-scale litigation related to damage to our environment, without first having the money to acquire the expertise necessary to competently pursue these claims.

With regard to keeping the Governor, Legislature, and the public notified of the progress in this litigation, I fully support the concept that the status of the litigation should be reported by our office. Such status would and should be public information. In particular, if during the case we uncover information that there is a new and significant danger to our water or our people, we should report it. However, I note that reporting on the status or cost of litigation is very different

from reporting on litigation strategy or communications between our office and our consultants. The privilege to protect the confidentiality between an attorney and a client is long and deep rooted for a reason; a client and attorney need to speak freely without worry that information relevant to legal strategy may be revealed to opposing parties and damage their case.

Our community, including several members of the Legislature, has been calling for action to address this issue for years. Every day that passes is a day that we could be working to secure the best firm available, at the best rate, to file the best case for Guam.

We are ready to proceed.

LEEVIN T. CAMACHO
Attorney General of Guam